



[4410-05P]

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 506

[BOP Docket No. 1156-P]

RIN 1120-ABXX

Inmate Commissary Account Deposit Procedures

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to amend its regulations on inmate commissary account deposit procedures and requirements to provide clarification.

Specifically, the amendments will clarify that, regardless of the form or method of the deposit (by mail or electronic deposit), the Bureau is authorized to obtain transaction information about the sender, and the sender is required to provide such information to the Bureau and its authorized service providers if the sender seeks to deposit funds in an inmate's commissary account.

DATES: Comments must be received by [Insert date 60 days after publication in Federal Register].

ADDRESSES: Submit comments to Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW, Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105, email BOPRULES@BOP.GOV.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at www.regulations.gov. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

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If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify

confidential business information to be redacted within the comment. If a comment contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on www.regulations.gov.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the "For Further Information Contact" paragraph.

The Proposed Rule: The Bureau proposes to amend and clarify its inmate commissary account regulations, published on July 2, 2004 (69 FR 40315). The proposed revisions are explained below.

Section 506.1 Purpose.

In this regulation, we reiterate the purpose of the inmate commissary account deposit program, as stated in the current regulation. We also state that the Bureau operates and maintains individual inmate commissary accounts in a manner that preserves the safety, security, and good order of Bureau institutions, and protects the public.

Section 506.2 Methods of depositing funds into an inmate commissary account.

In this regulation, the Bureau clarifies that funds from family, friends, or other sources, may be deposited into an inmate commissary account by mail or electronic deposit. Subparagraph (a) simply paraphrases language in current § 506.2(a).

Subparagraph (b) allows for electronic deposits, which may be sent from persons in the community through service providers (for example, a financial institution as defined in 31 U.S.C. § 5312(a)(2), bank, money service business, or money service provider or processor), and forwarded to the individual inmate's commissary account, as authorized and directed by the Bureau.

Section 506.3 Consent to collection and use of sender's transactional and personal identification data.

This regulation will clarify that persons sending or depositing, or attempting to send or deposit, funds to an inmate's commissary account under this subpart are required to provide all related transactional data, including the sender's personal identification information, to (1) the Bureau; and (2) the service provider(s) (for example, a financial institution, bank, money service business, or money service provider or processor) in accordance with the provisions of its agreement for providing service to the Bureau.

System of records BOP-006, Inmate Trust Fund Accounts and Commissary Record System, currently authorizes the Bureau to collect "personal identification data for persons who send or receive funds to/from inmates. This regulation serves to put the public on notice that such data will be collected whenever funds are sent or attempted to be sent to an inmate, regardless of the form of the deposit.

This regulation will also clarify that by sending or depositing, or attempting to send or deposit, funds to an inmate's commissary account under this subpart, a person consents to the collection, review, use, disclosure, and retention of, all related transactional data, including the sender's personal identification information, by both (1) the Bureau, pursuant to the applicable Privacy Act system(s) of records; and (2) the service provider in accordance with the provisions of its agreement for providing service to the Bureau.

This rule is in compliance with the Right to Financial Privacy Act, 12 U.S.C. 3401 et seq. (the RFPA), which allows federal agencies to have access to or obtain copies of the financial records of any customer from a financial institution only if the financial records are reasonably described and. . . the financial records are disclosed in response to a formal written request which meets certain notice and other technical requirements. 12 U.S.C. 3402(5).

RFPA provides that a financial institution cannot release a customer's financial records unless and until the federal government

authority seeking the records certifies in writing to the financial institution that the authority has complied with the applicable provisions of the RFPA or unless the release of such records falls within one of the RFPA's delineated exceptions.

The Bureau allows transfers into inmate accounts via the use of "money transmitters," or "monetary service" providers which do not qualify as "financial institutions" under the RFPA. Except as provided in Section 3414 of the RFPA (which allows for disclosures in connection with terrorism investigations and other exigent circumstances), a "financial institution" means "any office of a bank, savings bank, card issuer as defined in section 1602(n) of Title 15 [of the United States Code], industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union or consumer finance institution located in any State or territory of the United States, District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands." 12 U.S.C. 3401(1).

The "monetary service" providers that facilitate outside deposits into inmate accounts are not among the entities covered by the definition of "financial institution" above. Therefore, such entities are not "financial institutions" for purposes of the RFPA's general restrictions on providing personally identifiable records to federal government authorities.

Further, the legitimate law enforcement purpose for this rule is to use transactional information of people who deposit funds into inmate accounts in order to detect unlawful activity. Continuous and routine deposits into an inmate's account, sometimes from fraudulent sources, have been linked to unlawful conducting of a business by an inmate or other inmate-involved unlawful activity, such as drug trafficking, money laundering, fraudulent income tax returns, gambling, attempted criminal assault, and other such unlawful activities. This rule is intended to provide notice to those members of the public who deposit funds into inmate accounts that their transactional information will be retained for the purpose of detecting unlawful activity.

Executive Order 12866

The Director certifies that this rule is a "significant regulatory action" under section 3(f) of Executive Order 12866 and therefore was reviewed by the Office of Management and Budget for review.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the

various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General and the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 506

Prisoners.

L.C. Eichenlaub
Deputy Director, Bureau of Prisons

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we propose to revise 28 CFR part 506 to read as follows:

PART 506 -- INMATE COMMISSARY ACCOUNT

Sec.

506.1 Purpose.

506.2 Methods of depositing funds into an inmate commissary account.

506.3 Consent to collection and use of sender's transactional and personal identification data.

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 31 U.S.C. 1321.

§ 506.1 Purpose.

The purpose of this subpart is to describe the Bureau's operation and maintenance of individual inmate commissary accounts in a manner that preserves the safety, security, and good order of Bureau institutions, and protects the public. Family, friends, or other sources may send and deposit funds into these accounts, and inmates may withdraw funds from these accounts, as authorized by the Bureau.

§ 506.2 Methods of depositing funds into an inmate commissary account.

Family, friends, and other sources, (such as senders of tax refunds, dividends from stocks, or state benefits) may send or deposit funds into an inmate's commissary account by the following methods:

(a) By mail. Funds for deposit must be sent to the centralized inmate commissary account address we provide. Deposits must be in the form of a money order made out to the inmate's full name and complete register number. Personal checks will be returned to the sender, if an adequate return address is provided. The deposit envelope must not contain any enclosure(s) intended for delivery to the inmate. Any such enclosure(s) will be disposed.

(b) By electronic deposit. Electronic deposits of funds may be sent from persons in the community through service providers (for example, a financial institution, bank, money service business, or money service provider or processor), and forwarded to the individual inmate's commissary account, as authorized and directed by the Bureau.

§ 506.3 Consent to collection and use of sender's transactional and personal identification data.

Persons sending or depositing, or attempting to send or deposit, funds to an inmate's commissary account under this subpart are required to provide, and consent to the collection, review, use,

disclosure, and retention of, all related transactional data, including the sender's personal identification information, to:

(a) The Bureau, pursuant to the applicable Privacy Act system(s) of records; and

(b) The service provider(s) (for example, a financial institution, bank, money service business, or money service provider or processor) involved with the inmate commissary account program as authorized and directed by the Bureau in accordance with its agreement for providing service to the Bureau.

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